

## STATE OF IOWA



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### CITIZENS' AIDE/OMBUDSMAN

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**To: Government Oversight Committee**  
**From: William P. Angrick II, Citizens' Aide/Ombudsman**  
**Date: October 18, 2005**  
**Re: Public Records and Identity Theft**

### Public Records and Identity Theft

A growing number of government agencies have implemented on-line database searches as a convenience for the citizens of Iowa. These on-line databases are an efficient and cost-effective way for the agencies to provide public records access. Unfortunately, some of these public records may also contain personal information, thereby exposing citizens to the risk of identity theft. Realistically, the potential for identity theft exists every time a government agency responds to a public records request when the agency does not redact personal information. Clearly times have changed and government must respond to these changes in a manner that will allow it to do its job while protecting the citizens it serves.

These concerns are not exclusive to Iowa. An article from the October/November 2004 State Legislatures magazine entitled *Foiling I.D. Thieves* states, in part, that "[I]dentity theft is on the rise, and states are looking for ways to secure their citizens' vital records." The article also notes that personal identification information is spread across many agencies and the "diffused result" has unintentionally provided an opening for a wide variety of identity theft. Although the article focuses on vital records, the facts remain relevant: there were 10,000,000 victims of I.D. theft last year and the average victim spent 607 hours and \$1,495 resolving their case.

The Council of State Government's June 2005 publication, *Trends in America, Charting the Course Ahead*, (<http://www.csg.org/nr/csg/images/TrendsInAmericaFinal.pdf>), identifies ten "change drivers" that "highlights the major forces shaping our society...along with their implications for state government." Included in that list, "Privacy vs. Security: A Balancing Act."

Our concerns are supported by the experience of others.... In Hamilton County Ohio, residents became victims of identity theft after traffic citations that included personal information and Social Security Numbers were posted on the Hamilton County website.

(<http://www.foxnews.com/story/0,2933,163277,00.html>.)

Today in Iowa.....

Currently the release of personal information is addressed in a number of areas in Iowa law. Before a state agency can use personal information about Iowa citizens, the agency is required by Iowa Code

section 22.11 to adopt rules informing the public of the following information:

- The types of personally-identifiable information the agency collects.
- The agency's legal authority to collect personally-identifiable information.
- How the agency stores the information, who has access to the information, how mistakes can be corrected and what the agency uses the information for.

[See Iowa Attorney General's *Sunshine Advisory* for June 2003]

We have not researched to what extent all state agencies have complied with these requirements. It is also important to note that other public bodies, including cities and counties, are not subject to §22.11.

The legislature has already recognized and addressed the release of personal information in some areas of state government. For example, the Iowa Department of Transportation is specifically prohibited from releasing personal information, with certain exceptions:<sup>1</sup>

#### 321.11 RECORDS OF DEPARTMENT.

.....2. Notwithstanding subsection 1, personal information shall not be disclosed to a requestor, except as provided in 18 U.S.C. § 2721, unless the person whose personal information is requested has provided express written consent allowing disclosure of the person's personal information. As used in this section, "personal information" means information that identifies a person, including a person's photograph, social security number, driver's license number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status or a person's zip code.

Some state agencies have taken the initiative to exclude personally identifiable information, such as Social Security Numbers, from public records requests and their on-line databases. As an example, the Iowa Board of Nursing has chosen to change its process for license verification on its website ("On-Line Verification" at <http://www.state.ia.us/nursing/Licensure.html>):

#### **Iowa Board of Nursing Online License Verification**

Due to the threat of identity theft, we can no longer offer an option to verify a license status by entering a Social Security Number. If you do not have a license number for the person you are checking, you may use our automated telephone system, at 515-281-3255, where you can key in a Social Security Number and the system will return the status of the license without providing additional identification.

The Iowa legislature also passed legislation this past session, SF 270, addressing identity theft:

This Act relates to the commission of identity theft. The Act broadens the definition of "identification information" and describes the appropriate venue for prosecution of the crime of identity theft. Property obtained as a result of the commission of identity theft is subject to forfeiture. Victims of the crime of identity theft are entitled to a copy of the police report of the crime and certain financial institutions may file a criminal complaint of identity theft on behalf of a victim. The Act also expands the remedies available for civil causes of action against persons who commit identity theft and permits certain financial institutions to file a civil action on behalf of an account holder who is the victim of identity theft.

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<sup>1</sup> See Ombudsman October 18, 2005 memorandum to Government Oversight Committee regarding "Department of Public Safety and Public Records Law."

*But there is more that can be done.....*

Government agencies must create a framework for balancing the government's obligations under the freedom of information laws while protecting personal information. As a result of complaints brought to our office, combined with our research, we offer the following ideas for consideration:

- Establish an ID Theft Registry - creates a process and repository for agencies to verify individuals whose identity has been stolen and used in a crime.
- Enact legislation requiring businesses and government agencies to notify consumers if hackers gain entry to computers that contain unencrypted personal information such as credit card numbers, pass codes needed for use of personal accounts, Social Security Numbers or driver's license numbers. This would also apply in situations where the data is lost or stolen in some other manner.
- Develop standards for data security in all contracts issued by State agencies when personal information gathered and maintained by the State is provided to a private contractor.
- Consider passing legislation prohibiting the release of an individual's Social Security Number by all government bodies, except in specific situations. (e.g. when required by law or when necessary for internal or inter-agency verification or administrative purposes.)

Other states that have passed legislation of this nature include Indiana (Ind. Code 4-1-10) and California (Cal. Civil Code §1798.85).